STATE OF MICHIGAN

COURT OF APPEALS

DARLENE DIEKMAN,

Plaintiff-Appellee,

v

MONROE COUNTY EMPLOYEES' RETIREMENT SYSTEM,

Defendant-Appellant.

UNPUBLISHED
March 29, 2005

No. 251575
Monroe Circuit Court
LC No. 01-012989-CK

Before: Owens, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order reversing defendant's decision to deny plaintiff's application for a disability retirement pension.[1] We affirm.

I

Const 1963, art 6, § 28 provides that a circuit court's review of an administrative agency's decision "shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record." Although an agency's declaratory rulings are entitled to "deference, provided they are consistent with the purpose and policies of the statute in question[,]" the legal rulings of an administrative agency will be set aside "if they violate the constitution or a statute or contain a substantial and material error of law." *Adrian School Dist v Michigan Pub School Employees' Retirement Sys*, 458 Mich 326, 332; 582 NW2d 767 (1998).

"[T]his Court reviews for clear error a circuit court ruling concerning an administrative agency's decision." *Glennon v State Employees' Retirement Bd*, 259 Mich App 476, 478; 674

[1] Although this case was filed as an original action and the parties filed cross motions for summary disposition under MCR 2.116(C)(8) and (10), the case was correctly decided as an administrative appeal.

NW2d 728 (2003); see also *Mantei v Michigan Public School Employees Retirement System*, 256 Mich App 64, 71-72; 663 NW2d 486 (2003). Our review is "limited to a determination 'whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.'" *Id*. at 71, quoting *Boyd v Civil Service Comm'n*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

We review de novo questions of statutory interpretation. *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). The usual rules of statutory construction apply to the interpretation of municipal ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). Like statutes, ordinances must be interpreted according to their plain language. *Lantz v Southfield City Clerk*, 245 Mich App 621, 626; 628 NW2d 583 (2001). "[A] fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting a provision." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). "When a statute is clear and unambiguous, judicial construction or interpretation is unnecessary and therefore, precluded." *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). If reasonable minds can differ concerning the meaning of a statute, judicial construction is appropriate. *Heinz*, *supra* at 295.

If judicial construction is necessary, the Court must determine and give effect to the Legislature's intent by employing the ordinary and generally accepted meaning of the words used by the Legislature. *Lorencz*, *supra* at 376; *Glennon*, *supra* at 478. Thus, "[w]here the language of a statute is of doubtful meaning, a court must look to the object of the statute in light of the harm it is designed to remedy, and strive to apply a reasonable construction that will best accomplish the [drafter]'s purpose." *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994).

II

Plaintiff's entitlement to nonduty disability retirement benefits is governed by § 9.1 of defendant's retirement system ordinance. The parties stipulated below that plaintiff "has fulfilled each of the requirements under Section 9.1 of the Retirement Ordinance for a disability retirement, with the sole exception that the parties contest whether [she] earned ten (10) years of service credit as required by subsection 9.1(b)."[2]

With respect to service credit calculations, § 5.1 of defendant's retirement ordinance provides as follows:

> In determining service credit for a member:
>
> (a) Ten (10) or more days of service rendered in a calendar month shall be credited as a month of service for that calendar month. If a member

[2] Section 9.1(b) requires that "[t]he member has ten (10) or more years of credited service."

> renders less than ten (10) days of service in a calendar month he shall not receive service credit for that calendar month.
>
> (b) Ten (10) or more months of service rendered in a calendar year shall be credited as twelve (12) months of service for that calendar year. If a member renders less than ten (10) months of service in a calendar year he shall be credited with the actual number of months of service rendered by him in that calendar year.
>
> (c) In no case shall more than twelve (12) months of service be credited any member for all service rendered by him in any calendar year.

Resolution of the question whether plaintiff earned ten years of service hinges on whether she should be credited with full years of service for 1996 and 1998. The parties do not dispute that plaintiff worked nine months and seventeen days in 1996, and nine months and twenty-four days in 1998. Defendant credited plaintiff with ten months of service in each of those years in accordance with § 5.1(a), but rejected plaintiff's assertion that, under § 5.1(b), she is entitled to credit for a full year of service for each of those two years.

The circuit court rejected defendant's interpretation of the retirement ordinance, explaining as follows:

> The Retirement Board calculated her accrued hours by adding together her accumulated days and months of service irrespective of in what calendar month she earned those days of service, dividing the total accumulated days into months and then dividing those accumulated months into years. This analysis arbitrarily and capriciously ignores the specific language in § 5.1(a) of the Retirement Ordinance which states that if an employees [sic] works 10 days in a **calendar month**, that is considered having worked one month. [Emphasis in original.]

The circuit court then engaged in a month by month analysis of the number of days worked by plaintiff, and independently calculated her service credit.

Regardless of the correctness of the court's methodology, the court's year by year calculations yielded the same number of years and months of service as defendant's calculations, except for the years 1996 and 1998. In each of those two years, the court credited plaintiff with one year of service by first awarding her with ten months of service credit under § 5.1(a), and then using those ten credited months of service to award her a full year of service credit under § 5.1(b). The correctness of the second calculation is at the heart of the dispute in this appeal.

III

We agree with the trial court that defendant's calculation of plaintiff's "actual service" is contrary to the language of § 5.1. We further conclude that defendant incorrectly calculated plaintiff's "service credit" as mandated by § 5.1.

Given the agreed upon facts that plaintiff provided or "rendered" nine months and seventeen days of service in 1996, and nine months and twenty-four days of service in 1998,

§ 5.1(a) plainly and unambiguously mandates that she receive credit for a tenth full "month of service" in each year. Subsection 5.1(b) in turn provides that when an employee has provided or rendered ten or more "months of service" during a particular year, the employee shall receive credit for twelve "months of service for that calendar year." In this case, the plain language of § 5.1(b) mandates that plaintiff, who earned credit for ten "months of service" during both 1996 and 1998, according to § 5.1(a), receive a full calendar year of service credit for both 1996 and 1998.

Defendant contends that the ordinance distinguishes between service *credited* and service *rendered*, and that § 5.1(b) clearly awards one year of service credit only when an employee has "rendered"[3] a full tenth month of service, that is, when the employee has actually worked (or taken approved leave) on each relevant workday of the tenth month. We disagree.

Defendant's proffered interpretation would place the second sentence of § 5.1(b) in direct conflict with § 5.1(a). Further, defendant conceded at argument that with respect to the first nine months of a calendar year, an employee is entitled the credit for each month in which the employee worked at least ten days, without regard to whether the employee actually rendered a month of service.[4]

The second sentence of § 5.1(b) provides that if an employee renders less than ten months of service in a calendar year, as defendant contends plaintiff did in the two years at issue, the employee "shall be credited with the actual number of months of service rendered by him in that calendar year." Interpreting "rendered" in the manner urged by defendant leads to internal inconsistencies. If an employee does not actually render ten months of service, the employee is to be credited with the actual service rendered. If that service is to be calculated based on days actually worked, according to defendant's definition of "rendered," the clear language of § 5.1(a) is rendered void. In fact, defendant does not even contend that the ordinance should be so construed.

The word "rendered" cannot be consistently interpreted in the manner advanced by defendant. Defendant seeks to give "rendered" a different meaning depending on where it appears. Defendant interprets "rendered" as meaning "actually worked" the first two times it appears in § 5.1(b), but interprets it more broadly the third time it appears. Moreover, it appears that defendant only ascribes the "actually worked" meaning to "rendered" when it is used in relation to the tenth month of service. In all other contexts, defendant appears to accept that § 5.1(a) grants an employee credit for a full month of service when not actually worked, and that § 5.1(b) treats those months as a month of service rendered.

---

[3] The ordinance does not specifically define the term "rendered."

[4] Defendant conceded that if an employee were to work ten days in each of eleven calendar months, the employee would be entitled to a full year of service, despite the fact that the employee did not actually "render" ten months of service. Similarly, defendant conceded that an employee who works ten days in each of ten calendar months is entitled to ten months of credit, although ten full months of service were not actually "rendered."

The well-established rules of statutory construction preclude us from sanctioning defendant's proffered interpretation. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (explaining that courts must give effect to every word, phrase and clause in a statute, and avoid any interpretation that would render any part of the statute surplusage or nugatory).

Because the circuit court calculated plaintiff's service credit according to the plain terms of § 5.1, which defendant disregarded in its service credit calculations, we conclude that the court properly found that plaintiff had ten or more years of credited service, and properly reversed defendant's service credit determination.[5] *Adrian Sch Dist*, *supra* at 332.

We affirm the circuit court's order granting plaintiff's motion for summary disposition and denying defendant's motion. The case is remanded to defendant's retirement board for further proceedings to calculate the benefits due plaintiff, as ordered by the circuit court. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Helene N. White

[5] Having found that the circuit court properly found that plaintiff is entitled to a nonduty disability pension, we need not address her entitlement to a duty disability pension. Further, because the circuit court expressly declined to address any separate issues, factual or legal, related to whether plaintiff is entitled to a *duty* disability retirement pension, that issue is not properly before us. *Shuler v Michigan Physicians Mutual Liability Co*, 260 Mich App 492, 524; 679 NW2d 106 (2004).